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8 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 S&W FOREST PRODUCTS LTD,

11 Plaintiff,

12 v.

13 CEDAR SHAKE & SHINGLE
14 BUREAU, et al.,

15 Defendants.

CASE NO. C19-202 MJP

ORDER ON MOTIONS TO
DISMISS

16 The above entitled Court, having received and reviewed:

- 17 1. Defendants' Motions to Dismiss (Dkt. Nos. 87, 88, 89),
18 2. Plaintiff's Responses to Motions to Dismiss (Dkt. Nos. 94, 95),
19 3. Defendants' Replies in Support of Motions to Dismiss (Dkt. Nos. 97, 99, 100),

20 all supporting declarations and exhibits, and relevant portions of the record, rules as follows:

21 IT IS ORDERED that Defendant Waldun Forest Products Ltd.'s FRCP 12(b)(2) motion
22 is DENIED.
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1 IT IS ORDERED that the FRCP 12(b)(6) motions to dismiss the Sherman Act claim
2 against all Defendants are GRANTED.

3 IT IS FURTHER ORDERED that the motion to dismiss the breach of contract claim
4 against Defendant Cedar Shake & Shingle Bureau is DENIED.

5 **Background**¹

6 Defendant Cedar Shake & Shingle Bureau (“CSSB”) is the only trade association serving
7 the cedar shake and shingle industry. ¶ 19. The organization created, promotes and regulates its
8 “Certi-Label”™ labeling program, a quality control rating which grades different varieties of
9 shakes and shingles, and which Plaintiff alleges has become the standard in the “high-end” cedar
10 shake and shingle market. ¶¶ 2, 3.

11 Co-Defendants Waldun Forest Products Ltd. (“Waldun”) and Anbrook Industries Ltd.
12 (“Anbrook”) are two of the largest mills in the industry and Plaintiff alleges that they have led a
13 consortium of the larger cedar shake and shingle member mills through a series of maneuvers
14 within CSSB intended to consolidate their power, fix prices on their products, and eliminate
15 bureau members attempting to price their products more competitively. ¶ 6. In a section of the
16 FAC labeled “The CSSB/Waldun/Anbrook Conspiracy to Restrain Trade,” Plaintiff alleges a
17 series of “anticompetitive actions” which include reducing the number of Board members,
18 defeating both term limits on CSSB directors and attempts to eliminate the weighted voting
19 system which favors the higher-producing mills, and granting the Board chair (currently the
20 president and CEO of Anbrook) the right to vote on all matters (instead of only voting to break
21 ties). ¶ 28.

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24 ¹ All citations in this section are to the First Amended Complaint (“FAC”) at Dkt. No. 68.

1 According to Plaintiff, this anti-competitive conspiracy culminated in the “recusal” of its
2 representative from the Bureau’s Board of Directors and the company’s illegal termination from
3 the CSSB on December 21, 2018, an action which Plaintiff alleges was undertaken under false
4 pretenses and in violation of the Membership Agreement and the Bureau’s bylaws. ¶¶ 29-41.
5 That termination was preceded by a December 5, 2018 statement allegedly made by Curtis
6 Walker (president and CEO of Waldun) to a third party that “CSSB member mills should hold
7 their prices at consistent levels” and that “we just need to get rid of [the head of S&W].” ¶ 38.

8 Plaintiff has filed suit against all three Defendants for a violation of § 1 of the Sherman
9 Act (a conspiracy in restraint of trade), and against Defendant CSSB for breach of contract
10 related to its removal from the trade association. The complaint was originally filed on February
11 13, 2019 (Dkt. No. 1); Plaintiff later filed a First Amended Complaint (“FAC;” Dkt. No. 68)
12 which is the subject of these dismissal motions. All three Defendants move for dismissal under
13 FRCP 12(b)(6); co-Defendants Anbrook and Waldun have joined in CSSB’s motion in addition
14 to filing their own. Defendant Waldun also asserts a FRCP 12(b)(2) claim that this Court lacks
15 personal jurisdiction over it.

16 **Discussion**

17 **Standard of review**

18 Under FRCP 12(b)(6), the Court may dismiss a complaint for "failure to state a claim
19 upon which relief can be granted." In ruling on a motion to dismiss, the Court must construe the
20 complaint in the light most favorable to the non-moving party. Livid Holdings Ltd. v. Salomon
21 Smith Barney, Inc., 416 F.3d 940, 946 (9th Cir. 2005). The Court must accept all well-pleaded
22 allegations of material fact as true and draw all reasonable inferences in favor of the plaintiff.
23 Wyler Summit P’ship v. Turner Broad. Sys., 135 F.3d 658, 661 (9th Cir. 1998).

1 Dismissal is appropriate where a complaint fails to allege "enough facts to state a claim to
2 relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). A
3 claim is plausible on its face "when the plaintiff pleads factual content that allows the court to
4 draw the reasonable inference that the defendant is liable for the misconduct alleged." Aschcroft
5 v. Iqbal, 129 S. Ct. 1937, 1949 (2009). As a result, a complaint must contain "more than labels
6 and conclusions, and a formulaic recitation of the elements of a cause of action will not do."
7 Twombly, 550 U.S. at 555.

8 Timeliness

9 Preliminarily, the Court must address Plaintiff's claim that neither of the motions to
10 dismiss filed by Anbrook or Waldun are "timely." FRCP 15(a)(3) requires an answer or
11 responsive pleading within 14 days of the filing of a complaint. In ruling on Plaintiff's earlier
12 request for a preliminary injunction against CSSB, the Court extended the responsive deadline to
13 30 days from the date of the ruling (*see* Dkt. No. 62), a ruling which Plaintiff contends only
14 pertained to CSSB. The motions to dismiss from co-Defendants Anbrook and Waldun were filed
15 20 days after the filing of Plaintiff's FAC and Plaintiff argues that the Court should strike the
16 motions based on the six-day delay.

17 The request is denied. Waldun and Anbrook maintain that they thought the extension
18 applied to them as well; Plaintiff's only evidence to the contrary is a minute entry in the docket
19 stating that "Defendant's [*singular*] answer or response to Plaintiff's complaint due 30 days
20 following the issuance of this ruling." Id. The Court does not consider this definitive proof of
21 Plaintiff's argument; it is neither a transcript of the Court's oral ruling nor a written order. A six-
22 day filing delay, even if based on a misunderstanding, should not determine a substantive motion
23 such as this.

1 FRCP 12(b)(2): Personal jurisdiction (Waldun only)

2 Plaintiff makes no argument that there is general jurisdiction over Waldun; i.e., the
3 company is neither incorporated in Washington nor has its principle place of business in the
4 state.

5 Plaintiff does assert that the Court has specific jurisdiction over Waldun, however, an
6 assertion which requires it to establish that:

- 7 1. Waldun “purposely directed activities” at the forum or availed itself of the privilege of
8 conducting business here;
- 9 2. Its claim against Waldun “arises out of or relates to Defendant’s forum-related activities;”
- 10 3. The exercise of jurisdiction “comports with fair play and substantial justice.”

11 Brayton Purcell LLP v. Recordon & Recordon, 606 F.3d 1124, 1128 (9th Cir. 2010).

12 Under the traditional test for specific jurisdiction, the Court finds that Plaintiff’s
13 complaint fails. In terms of “purposeful direction,” the case law in the Ninth Circuit requires an
14 intentional act, expressly aimed at the forum state, causing foreseeable harm in the forum.

15 Marvix Photo, Inc. v. Brand Techs., Inc., 647 F.3d 1218, 1228 (9th Cir. 2011). First of all, as
16 discussed in greater detail *infra* (see “FRCP 12(b)(6): Failure to state a claim”), Plaintiff has
17 failed to successfully state a cause of action for a price-fixing conspiracy to restrain trade – much
18 less a conspiracy “expressly aimed at the forum state” – so it is moot whether Waldun’s alleged
19 “intentional price-fixing acts” were aimed at this forum.

20 Secondly, Plaintiff’s argument that Waldun’s membership in a Washington non-profit
21 (CSSB is a non-profit organization registered in the State of Washington) is sufficient contact
22 with this forum to justify the exercise of jurisdiction no longer represents the state of the law in
23 this area. The contacts with the forum must be specifically related to complained-of activity in
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1 order to establish specific jurisdiction (*see* Waite v. All Acquisition Corp., 901 F.3d 1307 (11th
2 Cir. 2018)).

3 The Court has already mentioned (and will discuss in more detail *infra*) the insufficiency
4 of the allegations of intentional acts of price-fixing. To the extent that the alleged intentional
5 acts concern the “group boycott/wrongful termination” of S&W, jurisdiction is still lacking.
6 Waldun is a British Columbia corporation, as are Anbrook and S&W – even if Plaintiff were
7 able to allege facts adequate to establish that Waldun conspired with Anbrook to wrongfully
8 terminate the company from the CSSB as a means of restraining S&W from conducting business
9 (which it has not), there are no allegations that any of the activities related to that agreement took
10 place in (or were aimed at) the forum state. Plaintiff does not even allege that the meeting at
11 which it was terminated from the association took place in Washington. Traditional personal
12 jurisdiction is lacking.

13 However, there is a statutory jurisdictional provision in the Sherman Act which permits
14 service *worldwide* for Sherman Act claims. *See* 15 U.S.C. § 22 (§ 12 of the Sherman Act).
15 Antitrust litigation employs a “national contacts” analysis for jurisdiction which simply requires
16 minimum contacts with the U.S. sufficient to satisfy due process in order to find personal
17 jurisdiction in any district. Action Embroidery Corp. v. Atlantic. Embroidery, Inc., 368 F.3d
18 1174, 1180 (9th Cir. 2004).

19 Waldun attempts to evade jurisdiction on this basis by citing an 11th Circuit case which
20 held that, unless service is made under the Sherman Act, jurisdiction cannot be established on the
21 “national contacts” basis permitted under the statute. Gen. Cigar Holdings, Inc. v. Altadis, S.A.,
22 205 F.Supp.2d 1335, 1340 (S.D.Fla. 2002); *aff’d*, 54 F.App’x 492 (11th Cir. 2002). Here,
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24

1 Plaintiff served Waldun under the Hague Convention, not the Sherman Act, and Waldun argues
2 that this disqualifies S&W from relying on a “national contacts” analysis.

3 This Court declines to adopt the 11th Circuit rule or Waldun’s argument. No other
4 jurisdiction besides the 11th has followed the rule (it has only even been cited once since 2002).
5 Plaintiff’s claims against Waldun are made under the Sherman Act, which authorizes nationwide
6 service of process; the Court fails to see how (in terms of either fundamental fairness or due
7 process) it makes any difference whether the service is actually made “under” the Sherman Act.
8 The statute reads

9 Any suit, action, or proceeding under the antitrust laws against a
10 corporation may be brought not only in the judicial district whereof it is an
11 inhabitant, but also in any district wherein it may be found or transacts
business; and all process in such cases may be served in the district of
which it is an inhabitant, or wherever it may be found.

12 15 U.S.C.S. § 22 (emphasis supplied). “All process... may be served” as long as the suit is
13 “under the antitrust laws;” the provision says nothing about “only service made under this
14 statute.” Plaintiff adequately asserts the requisite transaction of business throughout the U.S. by
15 Waldun in its complaint (*see* FAC at ¶ 15), and the Court is satisfied that personal jurisdiction
16 over the Defendant exists under a “national contacts” analysis.

17 FRCP 12(b)(6): Failure to state a claim

18 *First Claim: Sherman Act § 1 violation*

19 Successfully pleading a violation of § 1 of the Sherman Act (15 U.S.C. *et seq.*) requires
20 three elements:

- 21 1. A contract, combination or conspiracy for the purpose of
- 22 2. “Unreasonably” restraining trade
- 23 3. Which affects interstate commerce.

1 T.W. Electrical Service, Inc. v. Pac. Electrical Contractors Assoc’n, 809 F.2d 626, 632-33 (9th

2 Cir. 1987).

3 The fatal flaw in Plaintiff’s pleadings is its inability to state facts which are either (1)

4 sufficient to allege a conspiracy or (2) sufficient to establish a *per se* conspiracy.

5 The Ninth Circuit has held that

6 ...to allege an agreement between antitrust co-conspirators, the complaint

7 must allege facts such as a “specific time, place, or person involved in the

8 alleged conspiracies” to give a defendant seeking to respond to allegations

of a conspiracy an idea of where to begin.

9 Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1047 (9th Cir. 2008)(*quoting* Bell Atlantic Corp. v.

10 Twombly, 127 S.Ct. 1955, 1970 at n.10).

11 Plaintiff’s FAC is deficient in this regard. The vast majority of its allegations

12 (particularly ¶ 28 which contains its lengthy laundry list of “anticompetitive acts”) consist of

13 simply appending the conclusory phrase “conspiring to” to a list of actions taken by Anbrook,

14 Waldun, or CSSB which S&W alleges were undertaken to diminish the power of (or eliminate)

15 “competitor member mills.” ¶ 28 of the FAC contains no allegation describing a “time, place or

16 person involved in the alleged conspiracies.” It is textbook conclusory pleading and it cannot

17 suffice to successfully allege the conspiracy required by § 1 of the Sherman Act.

18 Plaintiff’s pleading regarding the “conspiracy to terminate” it from the Bureau is

19 similarly vague and generic. Plaintiff alleges:

20 Prior to the vote to terminate S&W, defendant Waldun through Curtis

21 Walker and defendant Anbrook through Board chairperson Brooke

22 Meeker conspired with one or more other CSSB directors to present false

23 and defamatory information to the CSSB Board... and to exclude Intertek

24 chief inspector Wayne Rourke from participating in that meeting.

1 In furtherance of their conspiracy to terminate S&W as a CSSB member
2 mill, defendants Waldun and Anbrook through their chief executives
3 colluded with other members of the CSSB Board of Directors to deny
4 S&W any notice of the charges against it or opportunity to defend itself...
5 [and] these co-conspirators directed CSSB Executive Director Lynn
6 Christensen to issue a Notice of Recusal to S&W Sales Manager Sanjna
7 Hothi...

8 Id. at ¶¶ 39, 40. No facts are plead regarding when or where Waldun and Anbrook met to plot
9 this agreement, what was discussed, or who the “one or more other CSSB directors” might be.
10 This is exactly the kind of conclusory pleading which Twombly and Iqbal were intended to
11 prevent.

12 The one specific “time, place and person” instance which Plaintiff does plead is the
13 December 5, 2018 conversation between Waldun’s president and CEO Curtis Walker and a
14 member of the Watkins Sawmill. The specific facts alleged here are:

15 Curtis Walker stated that CSSB member mills should hold their prices at
16 consistent levels. He expressed anger about S&W’s willingness to
17 compete on price for shake and shingle products. He became very
18 agitated during his comments about S&W and stated: “yeah, well we just
19 need to get rid of [the head of S&W].”

20 FAC at ¶ 38. This is simply a report of one man talking, and inadequate for purposes of pleading
21 a conspiracy. A conspiracy by definition must consist of two or more people. There is no
22 allegation that Walker solicited the other party to the conversation to “hold their prices at
23 consistent levels” or “get rid of” S&W, and no allegation that Walker had similar conversations
24 (much less an agreement) with anyone else.

Alternatively, Plaintiff argues that CSSB is a “presumptive conspiracy” and that its
actions are *per se* anticompetitive. A finding that Plaintiff has plead a *per se* Sherman Act
violation would relieve it of the obligation to allege adequate facts to establish a conspiracy. The

1 default inquiry into antitrust allegations follows a “rule of reason” analysis; i.e., did the action(s)
2 impose an “unreasonable restraint” on trade? *See* Standard Oil Co. v. United States, 221 U.S. 1
3 (1911). However, “agreements or practices which because of their pernicious effect on
4 competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and
5 therefore illegal without elaborate inquiry as to the precise harm... or the business excuse for
6 their use” are considered “*per se*” anticompetitive. Northern Pacific R. Co. v. United States, 356
7 U.S. 1, 5 (1958).

8 The decision to apply the *per se* rule turns on "whether the practice
9 facially appears to be one that would always or almost always tend to
10 restrict competition and decrease output . . . or instead one designed to
11 'increase economic efficiency and render markets more, rather than less,
12 competitive.'" Broadcast Music, Inc. v. Columbia Broadcasting System,
13 Inc., 441 U.S. 1, 19-20 (1979) (citations omitted). See also National
14 Collegiate Athletic Assn. v. Board of Regents of University of Oklahoma,
15 468 U.S. 85, 103-104 (1984) ("*Per se* rules are invoked when surrounding
16 circumstances make the likelihood of anticompetitive conduct so great as
17 to render unjustified further examination of the challenged conduct").

18 Nw. Wholesale Stationers, Inc. v. Pac. Stationery & Printing Co., 472 U.S. 284, 289-90 (1985).²

19 Plaintiff has two theories to advance in support of its argument that CSSB’s actions were
20 facially restrictive of competition. The first is that that the Defendants were engaged in a
21 conspiracy to fix prices. The problem with this theory is that, outside of Walker’s isolated
22 comment, there are no facts alleged which support this allegation. Plaintiff asserts that every
23 “anticompetitive act” it complains of (*see* FAC at ¶ 28) was in service of a plan to fix prices, but
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² The Supreme Court in Nw. Wholesale went on to say that “[w]hen the plaintiff challenges expulsion from a joint buying cooperative, some showing must be made that the cooperative possesses market power or unique access to a business element necessary for effective competition.” *Id.* at 298. Both parties devote considerable briefing to whether Plaintiff has adequately plead a “relevant market” for Sherman Act purposes. The Court declines to reach that issue in light of the ruling that Plaintiff has failed to plead sufficient facts related to its allegations of a conspiracy in restraint of trade to entitle it to relief.

1 there is no evidence adduced that such a plan actually existed; e.g., facts related to the time,
2 place or content of any meetings between “co-conspirators,” nor any sales/market statistics
3 tending to establish that prices were being maintained at artificially high levels.

4 Plaintiff argues that it is not required to prove “naked price-fixing;” that its “detailed
5 price-fixing allegations (including Curtis Walker’s admissions)” provide “relevant context” and
6 “strongly suggest that terminating S&W was part of a broader anticompetitive strategy.” Dkt.
7 No. 94, Response to CSSB Mtn at 10. But the problem is that, outside of Walker’s statement
8 (which, standing alone, is at best proof of Walker’s opinion on the subject, not proof of price-
9 fixing) nothing is alleged which makes the allegation of price-fixing plausible.

10 The other legal ground on which Plaintiff seeks to prove out its “*per se* anticompetitive”
11 theory is its termination from CSSB, which it attempts to paint in an antitrust light as a “group
12 boycott.” While the Court finds that Plaintiff has adequately plead that there were improprieties
13 in the process by which it was terminated (*see* “Second Claim: Breach of Contract” analysis
14 *infra*), that is not the same thing as properly alleging an anticompetitive act, particularly a *per se*
15 anticompetitive act. Plaintiff’s desire to plausibly imply that the termination was motivated by
16 its refusal to “get on board” the price-fixing train is severely undercut by its inability to produce
17 any evidence (besides the ineffectual Walker quote) that a price-fixing conspiracy existed.

18 This approach is further undercut by the undisputed fact that CSSB did have the right,
19 under the Agreement, to terminate members under certain circumstances. Plaintiff alleges that
20 its termination was procedurally improper and based on false pretenses; CSSB asserts that it was
21 simply fulfilling its mandate to protect the industry and the public from shoddy and/or deceptive
22 practices and improper use of its valuable Certi-Label™ process. While this litigation is not at a
23 point where the Court is required to ascertain who has the more meritorious position, the fact that
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1 there is a potentially legitimate business motive for CSSB's actions is sufficient to defeat
2 Plaintiff's Sherman Act claim even at this early stage.

3 Allegations of facts that could just as easily suggest rational, legal
4 business behavior by the defendants as they could suggest an illegal
5 conspiracy are insufficient to plead a violation of the antitrust laws. Bell
6 Atlantic, 127 S. Ct. at 1964-66 & n.5 (explaining that an antitrust
7 complaint must cross the threshold not only between "conclusory and
8 factual" but also between "the factually neutral and the factually
9 suggestive").

10 Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1049 (9th Cir. 2008).

11 The bottom line is that properly pleading a *per se* Sherman Act violation presents a high
12 bar, as the Supreme Court has explained:

13 Resort to *per se* rules is confined to restraints, like those mentioned, "that
14 would always or almost always tend to restrict competition and decrease
15 output." [citation omitted] **To justify a *per se* prohibition a restraint
16 must have "manifestly anticompetitive" effects, GTE Sylvania, supra,
17 at 50, 97 S. Ct. 2549, 53 L. Ed. 2d 568, and "lack . . . any redeeming
18 virtue," Northwest Wholesale Stationers, Inc. v. Pacific Stationery &
19 Printing Co., 472 U.S. 284, 289, 105 S. Ct. 2613, 86 L. Ed. 2d 202 (1985)
20 (internal quotation marks omitted).**

21 As a consequence, **the *per se* rule is appropriate only after courts have
22 had considerable experience with the type of restraint at issue,**
23 **[citation omitted] and only if courts can predict with confidence that it**
24 **would be invalidated in all or almost all instances under the rule of**
reason. [citation omitted] It should come as no surprise, then, that "we
have expressed reluctance to adopt *per se* rules with regard to restraints
imposed in the context of business relationships where the economic
impact of certain practices is not immediately obvious." [citation omitted]

21 Leegin Creative Leather Prods. v. PSKS, Inc., 551 U.S. 877, 885-86, 886-87 (2007)(emphasis
22 supplied). None of the factors mentioned above is present here – the acts alleged are not
23 “manifestly uncompetitive,” this Court has not had “considerable experience with the type of
24

1 restraint at issue” (nor has Plaintiff cited to cases addressing similar situations), and the
2 economic impact of the actions of which Plaintiff complains are “not immediately obvious.”

3 Plaintiff has failed to adequately plead a *per se* Sherman Act violation, which means it
4 must rely on a “rule of reason” analysis to support its allegations. The requirements of
5 successfully meeting the “rule of reason” test return Plaintiff to the necessity of establishing the
6 “conspiracy/combination/contract” element cited *supra*, a requirement which its FAC fails to
7 meet.

8 On this basis, the Court will GRANT the Defendants’ motion to dismiss as regards the
9 first cause of action in Plaintiff’s FAC.

10 *Second Claim: Breach of Contract*

11 Defendant CSSB seeks dismissal of this cause of action on the grounds that the FAC is
12 devoid of any allegations of a *specific* breach; i.e., which provisions of their contract were
13 violated. But, as Plaintiff points out, the Agreement incorporates the organization’s bylaws, and
14 this Court has already found that Plaintiff has adequately alleged that (1) the notice provision of
15 the bylaws was violated by the “non-noticed” termination meeting, and (2) the “recusal” of
16 Plaintiff’s representative from the Board was an *ultra vires* act not sanctioned by the bylaws.
17 Dkt. No. 65, Order Granting Preliminary Injunction at 5-7.

18 Furthermore, the bylaws require that termination of membership be “for cause;” either a
19 failure to comply with [the] Bylaws,... its Member Agreement, or any of
20 the policies, procedures, rules and regulations adopted by resolution of the
21 CSSB Members or the Board of Directors... or for conduct detrimental to
CSSB or its Members.

22 FAC at ¶ 54. By Plaintiff’s allegations, the termination was made under false pretenses and thus
23 was not “for cause” – clearly a violation of Defendant’s contractual agreement with its members.
24

1 Defendant CSSB also seeks dismissal of this claim on the basis of a “limitation of
2 liability” provision in the Agreement which states:

3 Limited Liability for [CSSB]. [CSSB] shall not be liable for special,
4 incidental, indirect or consequential damages of any kind whatsoever,
5 whether alleged to have resulted, directly or indirectly, from a breach by
[CSSB] of this Agreement o[r] other contract, negligence, or other tort or
otherwise.

6 Dkt. No. 11-2, Agreement, ¶ 13.

7 Not surprisingly, Plaintiff indicates that it intends to challenge this aspect of its
8 membership contract as unconscionable when raised as a defense in CSSB’s answer. Defendant
9 argues that the determination of the validity of this clause is purely a matter of law, but if it
10 intends to imply that the Court should resolve the issue at this stage of the proceedings, the Court
11 disagrees and declines to do so.

12 The motion to dismiss the breach of contract claim is DENIED.

13 Conclusion

14 Plaintiff has established personal jurisdiction over Defendant Waldun Industries, Ltd.
15 based on a “national contacts” analysis, as it is permitted to do on the basis of its Sherman Act
16 claim. Plaintiff has alleged sufficient facts to state a plausible claim for relief on its breach of
17 contract action against Defendant CSSB.

18 However, Plaintiff has failed to allege sufficient facts to plausibly claim relief under the
19 Sherman Act against the named Defendants, and that claim will be dismissed pursuant to FRCP
20 12(b)(6).

1 The clerk is ordered to provide copies of this order to all counsel.

2 Dated August 7, 2019.

3 

4 Marsha J. Pechman
5 United States Senior District Judge